

# A Christmas Wish

---

Maximilian Steinbeis

2018-12-15T18:37:14

Dear Friends of Verfassungsblog,

This is the last editorial this year before the Christmas break, and before I get to the constitutional news of the week of which there is plenty, allow me to write a few words about us.

For one thing: This has been a crazy year, and I owe a huge debt of gratitude to all those who helped making it happen. Above all, of course, to our global network of authors, whose number, as of a few days ago, has reached quadruple digits and who are our pride and joy. The number and variety of topics has also increased enormously. On average, we have published 44 articles every month (2017: 38), and at the peak in June with 69 articles, we really struggled to keep up (as you maybe did at times, too). Our reach has grown a lot, too: The number of our monthly visitors has shot up from an average of 28,000 to no less than 43,000. That may still look tiny for an online medium, but for a nerdy academic forum of constitution geeks like us that's actually quite a lot, I'm told.

In terms of topics, two achievements stand out: In early summer, we had considerable impact in the fight in Germany about rejecting refugees at the border. The "rule of lawlessness" myth which the CSU, AfD and others had so successfully established over more than two years since 2015 was finally dispelled with a number of hard legal arguments, above all thanks to the interventions of [Daniel Thym](#) and [Dana Schmalz](#). And there was Poland, of course, and Hungary, and the existential and still dramatically underestimated danger that the authoritarian turn in these two countries alone poses to the European Union as a community based on the rule of law. We have worked on that continuously, with a series of articles by [Laurent Pech](#) and [Kim Scheppele](#) on the EU's options, with an online symposium on the ECJ *Celmer* ruling in cooperation with the [Max Planck Institute in Heidelberg](#), with dozens of other posts on all sorts of aspects, and if all that, in the end, couldn't effectively slow down, let alone stop the decay of democracy in the east of the EU and its continuous spread all over Europe, we can at least say that we have given our best.

## Speaking of online symposia

Online symposia: there have been seven of them on Verfassungsblog in 2018, and until the end of the year there will hopefully be an eighth. We have been developing this format since 2011 as a service for academic debate, and a growing number of cooperation partners have made use of it – the T.M.C. Asser Institute in The Hague [even twice](#), Armin von Bogdandy and our esteemed [MPI for International Law and Foreign Public Law](#) in Heidelberg, [Karin Loevy](#) from the NYU School of Law, [Mark](#)

[Dawson](#) from the Hertie School of Government and, of course, our main cooperation partner, Mattias Kumm's [Center for Global Constitutionalism at the WZB Berlin](#).

We want to do more of those. Online symposia are a great way to put up an expert debate on current news and affairs in the most flexible and efficient and visible way, and at a moment when people actually care and the demand for scientific expertise is accordingly high. Who doesn't know the frustration of holding an edited volume in your hands that documents a debate which was super-exciting at the day it happened but has turned stale and obsolete by the time it finally reaches the light of the public months or years after? One way to avoid that is an online symposium, which is one of the reasons we like that format so much.

So, please: if you have an idea for an online symposium, do not hesitate to get in touch. Ideally as early as the application stage. Funding providers are rather fond of proof of "public impact" and such, from what I hear. They cost a fraction of the sort of money even a small workshop or conference requires, with venue and travel costs and all. We are happy to discuss with you all the details, just drop us an [email](#).

## **The thing about money**

Which brings us to the matter of money. I get asked that question a lot: How is Verfassungsblog funded? There seems to be a widespread misconception that we are financed as part of a research institution or a research project. That is completely understandable because that is how it usually works in academia: Someone must have successfully applied for some funding somewhere or else we wouldn't be around, would we?

Well, no. That is not the case. We have not applied for any funding nor received any. Our cooperation partners have, of course, but not we. Verfassungsblog is, strictly speaking, not really part of academia at all. It can't be. We *cooperate* with scientific institutions, but we are not part of the system. Many of the people involved are, but Verfassungsblog by itself isn't. Verfassungsblog is a journalistic project. We are not on anyone's payroll and are not subject to anyone's instructions. We are independent. We do not publish research results, and we certainly do not do research PR. Only in this way could the Verfassungsblog project be successful in the long run.

On the other hand, Verfassungsblog has over the years become a massively costly operation, in terms of time but also of expenses. We need to make ends meet, too. Therefore, esteemed readers, we depend, for the sake of our independence, ultimately on no-one else but you.

As you may have noticed, people occasionally advertise their CfPs, CfAs and book release announcements in this editorial. If you have a budget for this, you are most welcome to place an ad, too, or ask your publisher to do so – in the classic way: as a text ad or as a JPG banner. That doesn't cost much, and it really makes a difference for us (and it's useful information for the community on top of that). Just send us an email.

The other thing I place my hope in is crowdfunding. You may remember that a few months ago, I asked you to support Verfassungsblog with 4 Euro per month. So far, the number of readers who have responded to this request has been, well, not exactly overwhelming. The number stalls currently at 219. I guess I can see why that is. I have noticed an irritation among my readers, in the sense of: hm, they seem to be funded somehow, why should I pay on top of that, too? I'm sorry, I guess I should have explained better how we operate (if I were a good salesman, I would have become one and not a ragged constitutional journalist). Anyway, I'm pretty sure that the number of people who read Verfassungsblog more than just occasionally is significantly higher than 219, isn't it? Actually, I still believe that 1000 is not overly ambitious. Therefore, if you want to support us with 4 euros a month, please click [here](#). If you want to support us with a monthly or one-time sum of your own choice, please click [here](#). Either way: our deep-felt gratitude is yours!

## Lawyers having fun

So, now that this is out of the way, let's get on to the topics of this once again extraordinarily eventful week: above all, of course, the jaw-dropping spectacle called Brexit. Last Monday, the CJEU offered the **British** the opportunity to change their sovereign minds about whether they really want what they had been tricked into voting for two years ago, and [KENNETH ARMSTRONG](#) explains what that judgment is about. At that time we still thought that the British Parliament would vote on Theresa May's Brexit deal on Tuesday, together with a number of intricate amendments tabled by the various factions in Parliament which [JACK SIMSON CAIRD](#) untangled for us. That did not happen. Theresa May is without a majority, but remains in office nevertheless for the time being. A legally interesting side branch of the affair is the dispute over the disclosure of the Attorney General's legal opinion, which incites [AGUSTÍN JOSÉ MENÉNDEZ](#) to accuse the government of aiming "at reducing both popular and democratic sovereignty to an empty shell before the incumbent Prime Minister and her cabinet are kicked out of power". It's all completely awful, but from a constitutionalist perspective it is also exceedingly interesting. Lawyers typically have the greatest fun when it becomes particularly horrible for those affected, and this time it's no different, is it?

The fact that law professors can also do differently, however, is shown by the appeal initiated by [ALBERTO ALEMANNO](#), [DAN KELEMEN](#) and [LAURENT PECH](#) to the presidents of the EU Commission, Council and Parliament to break their "shameful silence" and, with the CEU forced into exile by Viktor Orbán, finally to protect the Union from the activities of the **Hungarian** government. All three are holders of Jean Monnet Chairs, and so are the so far 39 co-signatories. We think that's great, and we think it would be even better if more science organisations in general would speak out on the rampant loss of academic freedom in Hungary.

In **France**, President Macron has tried to placate the *Gilets Jaunes* protests with a number of concessions. [TIM WIHL](#) points to the institutional political logic of the protests: Macron had destroyed the right-left balance in the party system and, with politically directionless pure reason, had "produced exclusions whose victims wander around disoriented and are already formally forced to chaoticise" (German).

The CJEU has handed down its answers to the German Federal Constitutional Court's referral on the monetary policy of the **European** Central Bank, and [MATTHIAS GOLDMANN](#) is rather satisfied with the outcome: Luxembourg gives neither Germany nor Italy cause to triumph but shows "in an exemplary way the rationalising effect of legal discourse".

Austerity comes often with pay cuts to the civil servants. [ANUSCHEH FARAHAT and TERESA VIOLANTE](#), on the occasion of a decision by the Federal Constitutional Court, examine the legal side of this phenomenon in a **German-Portuguese** comparison.

**Austria** freely bestows citizenship on loaded investors, but at the same time takes it away from dozens of dual citizens of Turkish origin. According to [ALMA STANKOVIC](#), the key question is why the decision as to who belongs and who does not should be made by the market.

In **Bavaria**, the Administrative Court of Appeals has referred the question to the European Court of Justice as to whether officials of the Free State could be taken into compulsory detention because of their point-blank refusal to implement the judicially ordered diesel ban in Munich. [BERNHARD WEGENER](#) fears that the worst may be yet to come in terms of clashes between the politically inert executive and a judiciary that makes protecting human rights their business in an increasingly heated climate (German).

Officials deliberately not doing what they should is a phenomenon that can also be observed at the **German** asylum agency BAMF, according to [MARK SWATEK-EVENSTEIN](#).

In **Austria**, courts have thwarted the plans of several regional governments to reduce the minimum income for those entitled to asylum, as [PETRA SUSSNER](#) reports.

Proceedings against the 2020 census are currently underway in the **US**. This raises interesting questions in comparison with the German 2011 census and the Federal Constitutional Court ruling on this issue, which [SUSAN ROSE-ACKERMAN and LENA RIEMER](#) are investigating.

At the beginning of the week in Stockholm, the Nobel Peace Prize was awarded to Denis Mukwege and Nadia Murat for their work against rape as weapons of war and civil war. [LEONIE STEINL](#) sheds light on the international criminal law side of this matter.

## Elsewhere

[CEDRIC SERNEELS](#) examines a judgment of the ECHR in a **Belgian** case concerning the right to have access to a lawyer in all stages of criminal proceedings.

[ELINA LEMAIRE](#) considers the rules on the remuneration of **French** constitutional judges to be too intransparent (French).

[JEAN-CHARLES ROTOUILLE](#) explains why it is so difficult to disinter the **Spanish** ex-dictator Francisco Franco (French).

[ANDRÉS BOIX PALOP](#) lashes out at the **Spanish** government's emergency edict regime of Pedro Sanchez and the elites' contempt for the constitutional rules they find uncomfortable (Spanish).

[PATRICK IVO D'ANDREA](#) reports on a ruling by the **Italian** Constitutional Court on flying regional flags on official buildings (Italian).

[ALEKS SZCZERBIAK](#) explains the political calculation behind the seemingly appeasing gestures of the Polish ruling party PiS in the matter of subjugation of the judiciary to the EU.

So much for this... year! For the remaining two weeks of it, we will still post quite a lot that will be hopefully worth your time, among other things about the reinvigorated zest for action of Viktor Orbán who, emboldened and shielded from ill by his very honourable conservative friends and allies of the EPP, seems determined to follow the lead of Poland and to legislate the living daylight out of what is left of an independent judiciary in his country. We will definitely look into that. But as far as this editorial is concerned, I will take a break until January.

Anyway, I wish you all a most relaxing and festive holiday season, and see you safe and well in the new year!

All the best,

Max Steinbeis

